

“Dalit” – A Legal Perspective

K. V. Ramakrishna Rao, B.Sc., M.A., A.M.I.E., C.Eng.(I), B.L.,

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| Independent Researcher. Superintendent of Central Excise. General Secretary – Bharatiya Itihasa Sankalana Samiti. Director – Institute for the Study of Ancient Indian Arts and Sciences | 25 (Old.9), Venkatachala Iyer Street, West Mambalam, Chennai – 600 033 Cell: 98402 92065 044 – 2833 1001 Extn.374 e- mail: kopallerao@yahoo.co.uk |
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Introduction: The word and expression “Dalit” has become catchy, captivating and appealing for the print and electronic media and as well as for the politicians, as they might feel that they have also involved to deal with important social reformative issue and solve the problem immediately. However¹, “.....*the handling of “Dalit” issue is very sensitive, as it is like a double-edged weapon, which may affect the person against whom it is used and as well as the person who uses it*”. Criticism, critical analysis and threadbare discussion of “Dalit issues” might also lead to such a condition. Ironically, even, it is used internationally with an intention to exite, disturb and divide the Indian society, instead of doing any good to disentangle the issue². Thus, when the National Commission for Scheduled Castes (NCSC) issued a circular in the month of January 2008, directing district collectors not to use the word “Dalit”, as it is neither constitutional nor legal, many of them would have seriously been affected and pondered over implications carefully. Of course, after consultation with the legal department, the Commission said the “Dalit” word is neither constitutional nor the word has been mentioned in the current laws. Rather ‘scheduled Caste’ is the appropriate and notified word as per the Article 341 of the Constitution, it said in a letter sent to all states³.

¹ Vedaprakash, **Dalit – Precept, Problem and Politics**, in “Dimensions of Conversion”, the Vivekananda Kendra Patrika, Chenai, Vol. 24, Feb. 1995, pp. 98-114.

² Generally, there have been national groups which used to internationalize the national issues and some international groups nationalize international issues, thereby, ignoring, disregarding and even disparaging the law of one nation under the guise of hyman rights and international law, though, UN has many times clearly pointed out that internation law and conventions cannot interfere in the national law.

Joshua Castellino and Elvira Dominguez Reddondo, **Minority Rights in Asia: A Comparative Legal Analysis**, Oxford University Press, UK, 2006.

Though equality and hate speech legislations, affirmative and linguistic protection measures, effective political, educational and civil participation are compared with CERD, ICERD etc., these are done on the angle of human rights.

Andre Beteille, **India: Equal Opportunity for All and Special Opportunities for Some**, in Development and Democracy, Johannesburg, 6 September, 1993, p.12.

³ New Indian Express, **Dalit word unconstitutional, says SC Commission**, Jan 18, 2008, <http://www.expressindia.com/latest-news/Dalit-word-unconstitutional-says-SC-Commission/262903/>

When the word “Dalit” was mentioned in the Supreme Court and high Court Judgments? A careful search and analysis of www.indiankanoon.org shows that the word “Dalit” appears in 354 judgments, of which it denotes individual names, appears in the name of organization and only recent times, it is used to denote SC. Interestingly, the word appears in a 1912 judgment, but as an individual name - Dalit Mohan Ghuckerbury⁴. It was used to denote SC, equating dalit with harijan in a 1975 case (See in the table below). Thereafter, its usage increases. However, it has to be noted that in the *Soosai v. Union of India*, AIR 1986 SC 733 judgment, the expression was not used⁵. Only in recent times, the advocates started using it in the conversion context. Therefore, it is evident that the judges, advocates and other connected experts knew that it was not a legal usage in any context, but a popular or rather colloquial usage.

| Citation / Appellants and Respondents | Full judgment can be accessed at: | Remarks / significance |
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| Dr. Ashish Nandy vs State Of Gujarat & Anr. on 1 September, 2010 | http://www.indiankanoon.org/doc/268034/ | Denoting to SC |
| Anand Singh & Anr. vs State Of U.P. & Ors. on 28 July, 2010 | http://www.indiankanoon.org/doc/1273595/ | Denoting to SC |
| Mr.Franklin Caesar Thomas vs Prime Minister Office on 16 June, 2010 | http://www.indiankanoon.org/doc/1568320/ | Denoting to SC and Christian demand of SC claim |
| Deepak Kumar Gaur vs State Of Haryana And Others on 25 May, 2010 | http://www.indiankanoon.org/doc/1568320/ | Denoting to SC |
| | | |
| Dattatraya Govind Mahajan & Ors. ... vs State Of Maharashtra & Anr on 27 January, 1977 | http://www.indiankanoon.org/doc/417020/ | The harijan serfdom or dalit proletarianism |
| State Of Kerala & Anr vs N. M. Thomas & Ors on 19 September, 1975 | http://www.indiankanoon.org/doc/1130169/ | Mentioned in the name of the organization – Dalit Panthers |
| Sastri Yagnapurushadji And ... vs Muldas Brudardas Vaishya And ... on 14 January, 1966 | http://www.indiankanoon.org/doc/145565/ | Mentioned in the name of the association |

From religious Dalit ideology to irreligious Dalit ideology: Initially, the Christians and the Muslims were claiming that their religions were more superior than Hindu religion, as their Gods could liberate them completely⁶. Many times, they declare and recommend that Hindus – SCs should convert

⁴ [Muthukumaraswami Pillai And ... vs King-Emperor on 17 April, 1912](http://www.indiankanoon.org/doc/1724192/)

⁵ Soosai Etc vs Union Of India And Others on 30 September, 1985, <http://www.indiankanoon.org/doc/1724190/>

⁶ Many books, articles, write-ups elaborately and faithfully bring out such claims. The missionary writings always delve on such tone and tenor, but liberally picked by the media and ideologists.

to their religions to get liberated and elevated⁷. Thus, they started Dalit theology and Liberation Theology respectively⁸. However, as their intentions were mundane, when non-theological methods were applied for conversion, the social status of the converted did not change, as they promised. In other words, their Gods and scriptures failed in liberating them. Meanwhile, both the Christians and Muslims were involved in conversion spree with competition. The Meenakshipuram conversion created a furore in India in 1981. Thus, the Christians also started their experiment with Soosai, a cobbler in Chennai⁹ resulting in the *Soosai v. Union of India*, AIR 1986 SC 733 judgment delivered by the Supreme Court, clearly pointing out the legal position that the SC benefit would not be available to the SCs, if they get converted to other religions other than Hindu, as per the Constitution. After losing the legal battle, they started reversing their stand. With the mounting contradictions in their theology and ideology, the Christians and Muslims started taking opposite stand that Dalits are neither Hindus, nor Christians nor Muslims. Ironically, they have even proposed to let there be no conversion of Dalits into any religion till at least they reach the national level of literacy and education and so on¹⁰. In other words, they have openly confessed that the conversion has utterly failed. In other words, their respective Gods could not liberate the dalits to promised elevated, egalitarian, or utopian status. The dalit ideologists themselves started discussing about the end of dalit ideology¹¹. However, the Christian writers even in 2010 have been discussing about “Dalit Christology” and so on without going into the reality of failure of social emancipation by the conversion¹².

Liberalization, privatization, globalization, and the nexus of Dalit and Radical Communist / Maoist organizations: With the pursuing of policies of liberalization, privatization and globalization and the growing MNCs on the Indian soil, the agricultural lands have been given to their factories and infrastructure. Thus, at one side, some Dalits have become suddenly rich by selling their lands to MNCs as compensation or otherwise, whereas, creating new generation of “Dalits” at the otherside. Thus, the affected marginalized groups in rural areas started regrouping themselves under different banners, but the nexus of Dalit and radical Communist / Maoist organizations is visible¹³. The demand started now is that reservation should be provided in the private companies also. However, it has to be noted that there is no legality in making such emotional and exiting demand.

⁷ On Dalit identity, Dalit Theology, Liberation Theology, Dalit Liberation, Dalit Christology,many books have been produced by the missionaries and Church writers.

⁸ Meenakshipuram conversions created a lot of commotion among the Hindus and there had been much heated and controversial debates about the dubious methods of conversion involved.

⁹ Incidentally, both the Islamic and Christian experiment of SCs started in Tamilnadu during 1980-85 period can be noted.

¹⁰ http://www.dalitreds.org/articles/Dalit_Agenda_in_the_Ambedkar_Yuga.pdf

¹¹ Kancha Ilaiah, *Buffalo Nationalism: A Critique Spiritual Fascism*, Samya, Kolkata, 2004, see chapter.28, “The End of Dalit Ideology”, pp.127-130.

¹² Peniel Rajkumar, *Dalit Theology and Dalit Liberation: Problems, Paradigms and Possibilities*, Ashgate Publishing company, USA, 2010, pp.115-126.

¹³ Prem Kumar Shinde, *Dalits and Human Rights: Dalits: the broken future*, Isha Books, New Delhi, 2005, p.203.

Production of more literature, campaigning and propaganda: As the propagandists started losing their legal battle, they have started aggressive media campaigning through different methods. Thus, the dalit issues are discussed in the star hotels or with star category comforts resulting in the production of glossy pamphlets, brochures and books¹⁴. Powerful lobbies of course, worked differently producing more “documents” exposing the injustice meted out against the converted Christians and Muslims, after conducting national and international workshops, seminars and conferences. This type of aggressive strategy, they believe, brings pressure on opinion making and decision taking authorities, ignoring or suppressing the legal reality and judicial status.

Caste-class conflicts exploited through Dalit ideology: Initially, with the inclusion of “Neo-Buddhists” into SC fold, the Christians and Muslims acted vigorously for the inclusion of dalit Christians and dalit Muslims in the Scheduled Caste Presidential Order 1950. Many times, they had to face the Caste-class conflicts under the Articles 15 (4) and 16 (4) of the Indian constitution. Moreover, each State controlled by the different political parties started identifying different castes as Scheduled Caste affecting the dalit identity and ideology. In addition, of course, the “socially and economically backward classes” also confront them¹⁵. Incidentally, the “socially and economically backward classes” also cover Scheduled castes and tribes¹⁶. A Scheduled caste is not a “caste” within the meaning of that word in Arts. 15 (1) and 16 (2)¹⁷. It has special meaning, namely, a caste as notified by the President under Art. 366 (24)¹⁸ having regard to their abysmal backwardness¹⁹. The Art. 366 (24) clearly says, “Scheduled Castes” means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under article 341 to be Scheduled Caste for the purpose of this Constitution. Moreover, Art.341 says –

(1) The President may with respect to any State or Union Territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union Territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification. Under this Article provision only, the Constitution (Scheduled

¹⁴ <http://www.ncdhr.org.in/ncdhr2/publications/publications>

¹⁵ While class covers caste, caste does not cover class.

¹⁶ State of M.P vs Nivedita - AIR 1981 SC. 2045 (para.25)

¹⁷ State of Kerala vs Thomas - AIR 1876 SC 490.

¹⁸ Baiyalal vs Harikrishnan - AIR 1965 SC 1557.

¹⁹ A. B. S. K. Sangh va Union of India - AIR 1981 SC 298 (para.42).

Castes) Order, 1950 has been issued²⁰. For convenience, it is appended as Annexure – I. The Christians²¹ and Muslims²² have started demanding the removal of Para (3) of this Order or amendment to it.

In 1956, Scheduled Caste Hindus converted to Sikh religion, the Constitution (Scheduled Caste) Order, 1950 was amended to include in it. They were listed in Presidential SC/ST Order, 1950, by amending Para 3 of Article 341 in 1956. For Neo Buddhists, Para 3 of Article 341 was amended in 1990 to include them²³. Here, there was no conflict in the law, as Art.25 treats Jaina, Buddhist and Sikh religions at par with Hindu religion.

Article 25 has been consonance with the Order read with Art.341:
Those who oppose, the Order do not go into the details of Art.25 and 341, or simply pretend to ignore.

25. Freedom of conscience and free profession, practice and propagation of religion.-

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law-

(a) Regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I.- The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II.- ***In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly (emphasis added).***

Thus, not only for the Sikhs and Buddhists, even, if the Jains demand, they can get them included in the Order²⁴, whereas, the above explanation could not accommodate the Christians and the Muslims.

²⁰ The Order and as well as the list of SCs mentioned for each state can be seen here:
<http://lawmin.nic.in/l1d/subord/rule3a.htm>

²¹ <http://www.cbcisite.com/cbcnews4122.htm>;
http://www.nccindia.in/news/pressrelease/n_179.htm
<http://www.thehindu.com/news/cities/Madurai/article564545.ece>

²² http://www.twocircles.net/2009aug26/tcn_special_misra_commission_report_excerpts_part_18.html

http://www.twocircles.net/2010jul22/sc_status_demanded_dalit_christians_and_dalit_muslims.html

²³ It was done during the reign of V. P. Singh, but now in Maharashtra, the real Dalits have started opposing the Buddhist hegemony, because, now the Indian Buddhist have started getting funds from Japan, Korea, China and other countries, just like Christian missionaries.

²⁴ However, the Jain community has been included in the list of minority by the National Commission for Minorities.

Why the Christians and Muslims could not be included: The constituent Assembly debates point out that this issue was already discussed considering the social reality, such specific provision has been made for the Hindus. Thus, the question does not arise, as to why the Order has been only meant for Hindus. Even critical writers like Partha S. Ghosh²⁵ While supporting the Soosai vs UOI judgment mentions as follows: In the context of **Conversion**, he records that , “**A person who is converted to another religion cannot claim Scheduled Caste status**” referring to *Soosai v. Union of India*, AIR 1986 SC 733. Again drawing attention to the (Scheduled Caste) Order 1950, he concludes that the entries in the Presidential Order have to be taken as final and it is not open to the court to make any addition or subtraction from the Presidential Order, based on the Supreme Court judgments²⁶. Under caption, “Dalit Christians”, he notes that the Dalit Christians made their demand for inclusion into the list of the Scheduled Castes was made as early as in 1950, but not heeded. For this he relies upon one Saturnino Dias²⁷, who reportedly pointed out in 1996.

What Nehru has told about the exclusion of the Christians: C. X. Francis (President of the Catholic Regional Committee of Nagpur) pointing out the injustice done to the “Dalit Christians” by the Presidential order, wrote to the Prime Minister, Pandit Jawaharlal Nehru. Interestingly, Nehru’s reply in this regard has been revealing. The letter dated 7 November 1950 written from the PM’s office in response²⁸, where he categorically said:

“.....**all state aid and facilities are to be given not only to the Hindu Scheduled castes but also to all other educationally and socially backward classes whether they profess Hinduism, Christianity or any other religion. Only in the matter of reservation of legislative bodies and Parliament, no person who professes a religion other than Hinduism shall be deemed to be a member of scheduled castes**”.

Thus, he differentiated between the facilities given to “**all other educationally and socially backward classes whether they profess Hinduism, Christianity or any other religion**” and to persons “**profess a religion other than Hinduism shall be deemed to be a member of scheduled castes**”. Whether it was written by Nehru himself or by getting legal opinion from the then Law Minister, Dr. Ambedkar, the legal position in the Presidential Order 1950 pointed out clearly exploded the myth of discrimination as early as in 1950 itself. At that time none could have questioned Pandit Nehru or Dr Ambedkar. Here, it is not differentiating

²⁵ Partha S. Ghosh, ***Positive Discrimination in India: A Political Analysis***, Ethnic Studies Report, Vol. XV, No. 2, July 2, 1997, p.155.

Can be accessed from: http://www.ices.lk/publications/esr/articles_jul97/Esr-Ghosh.PDF

²⁶ Partha S. Ghosh, opt.cit, under “ffirmative action in India”, pp.183-184.

²⁷ Saturnino Dias, ***Dalit Christians: Constitution Grants Privileges***, *The Statesman*, Calcutta, 22 August 1996.

²⁸ It was pointed out by one George Menezes who wrote in Times of India in 1995, as mentioned by Saturnino Dias and Partha Ghosh.

George Menezes, ***Dalit Christians Expect Promises to be Honoured***, Times of India, 12 December 1995.

citizens based on religion, as the provision itself has been made to Hindus. Therefore, there is no question of claiming reservation by the Christians from the government, when such reservation has been made for Hindus under Article 341, which has to be read with the provisions of Article 340 of the Constitution. If the Christians want to eat the cake meant for Hindus, that too, on illegal grounds, it would be only against social justice, which is talked about very often! Still the myth is carried on and even efforts are made to circumvent the provisions without any care for the Constitution. It has to be remembered that the Art.334 has been only for the reservation of seats for SCs, STs and Anglo-Indian communities in the Parliament and Legislative Assemblies by nomination for ten years. Nevertheless, it was amended every ten years, because of the politicization, that is five times since 1950. Therefore, no political party with any of its egalitarian or Utopian principle could recommend that it need not be extended beyond 2010 claiming that Indians achieved social justice or such reservation should be made available to the Christians and the Muslims also!

While the Christians have been vociferous about their demand for declaring “Dalit Christians” as SC, the Muslims have reservations about such reservation, because of their religious belief of equality and fraternity. With rhetoric, the dalit ideology was developed mainly by the Christian missionaries, but collapsed, definitely with the Soosai vs UOI judgment. They, then, started many motivated researches spending millions to prove that caste system and untouchability were there in Christianity²⁹, as prompted by the said judgment. Thus, the dalit theology evolved, was turned into dality ideology with the political ambition split over the social responsibility and failed theology³⁰.

From Sachar Committee report to Ranganath Misra Commission Report – the change in the stand of the Muslims: The period 2004 to 2009 appears to be crucial for these two commissions appointed to deal with much debated issues concerning “minorities”, but linking with SCs. Some political analysts pointed out the politicization involved in it also³¹ as in these years 2004 and 2009, the General Elections were fought. Though, “minorities” are to be religious and linguistic, they are invariably identified with one particular religious group. In fact, in Ranganath Misra Commission Report, both religious and linguistic minorities are treated as one in a particular context. Moreover, unlike Christians, the Muslims have been not so

²⁹ The Church funded Anthony Raj S.J, IDEAS Centre, Madurai to prove that caste and untouchability were there in Christianity, just to circumvent the law instead of respecting Jesus Christ, as pointed out by the Christians themselves. During 1987, there was enough correspondence on this subject and the Christian researchers have also recorded in their journals and books.

³⁰ Arvind P. Nirmal, V. Devasahayam, **Towards a common Dalit ideology**, papers presented at the National Seminar on Dalit Ideology organized by the Department of Dalit Theology, Gurukul Lutheran Theological College & Research Institute, Chennai.

Arvind P. Nirmal (ed.), **Towards a Common Dalit Ideology**, Gurukul Lutheran Theological College & Research Institute, Chennai, 1989.

³¹ IBN-Politics – In a political analytical report, it points out that before 2009 elections, the UPA identified 121 minority-concentration districts and worked with assurances offered to Muslims. Thus, they could win 50 out of 121 and coming second in 13 other.

assertive in claiming SC status at par with the Hindus, the politicization of their groups have made them to claim reservation. Of course, they prefer to claim based on religion rather than that of caste / SC. In fact, in all States of India, they get BC, MBC and even ST status. In Tamilnadu, they have been given 3.5% reservation at par with the Hindus. Thus, for getting political power, they have decided to compromise their theology and opt for caste based reservation. Thus, in Maharashtra after Haji Mastan's unsuccessful Dalit Muslim Suraksha Mahasangh, now one Muslim organization preferred to use the expression “Pasmanda” (meaning downtrodden and backward) instead of Dalit³². Thus, it is evident that the Muslims want an alternative word or expression like “arzal” or “Pasmanda” instead of “Dalit”, accordingly, they have also joined the fray by filing a petition in the Supreme court on the same lines.

Supreme Court serves notice on government on Dalit Muslims' plea: The Supreme Court on July 26th (Monday) 2010 gave six weeks' time to the central government to file its reply on a suit filed by the Akhil Maharashtra Muslim Khatik Samaj seeking inclusion in the list of other scheduled castes³³. The petition said that socially, Muslim Dalits like khatiks, mehtars, bhangi, lal-begi, halakkhor, mochi, mukri and garudi were similarly placed as their Hindu counterparts therefore they should be included in the category of other scheduled castes. An apex court bench of Justice P. Sathasivam and Justice B.S. Chauhan gave six weeks' time to the government after Solicitor General Gopal Subramanium told the court that a petition by similarly placed Dalit Christians was pending before the court. He said that the National Commission for Religious and Linguistic Minorities under the chairmanship of Justice Ranganath Mishra has recommended the delinking of religion from the issue of scheduled caste status. The solicitor general said that they need time for getting response from the states.

The period 2004 to 2009 coupled with Elections, Commissions and Committees: Interestingly, the period 2004 to 2009 coupled with two general elections that were fought more ferociously on ideological grounds by the Indian political parties with the UPA capturing power ultimately. Coincidentally, during this period, these Commissions and Committees were constituted and reports submitted hurriedly. The chronological events involved proves the haste in which, the process was put through:

May 2004 – the 14th Lok sabha Elections: The BJP-led NDA government, headed by Prime Minister Atal Bihari Vajpayee completed five years of its rule in 2004 and elections followed in four phases between April 20 and May 10, 2004. On May 13, the BJP conceded defeat and the Congress was able to put together a comfortable majority of more than 335 members out of 543 (including external support from BSP, SP, MDMK and the Left

³²The Muslims claim that their society is divided into ashraf (noble born), ajlaf (mean and lowly) and arzal (excluded) and thus equating arzal with SC.
<http://www.pasmandamuslims.com>.

Also see, Imtiaz Ahmed, **Can there be a Category called Dalit Muslims?**
<http://www.pasmandamuslims.com/2009/08/can-there-be-category-called-dalit.html>

³³ <http://www.legalindia.in/court-questions-government-on-dalit-muslims-plea>

front) with the help of its allies and under the direction of Sonia Gandhi. This post-poll alliance was called the United Progressive Alliance.

29-10-2004: Ministry of Social Justice and Empowerment (Minorities Division) issued the Notification No.1-11/2004 – MC (D) constituting the Ranganath Misra Commission to conduct and submit report within six months i.e, on or before 28-04-2005.

09-03-2005: Rajinder Sachar Committee constituted (before the constitution and completion of the Ranganath Misra Commission).

15-03-2005: Ministry of Social Justice and Empowerment issued the Notification E. No.1-11/2004 – MC (D) constituting the Commission appointing Chairperson, and three Members with a tenure of six months from the date of appointment i.e, 14-09-2005.

10-05-2005: The Member Secretary was appointed vide Notification No.4/16/2005– MC (D) with tenure upto 20-09-2005.

24-08-2005: Notification issued on by the Ministry which asked the Commission “as a part of its larger terms of reference for recommending welfare measures for the minorities including reservation in education and Government employment, examine the justification for specification of Dalit Christians (or Scheduled Caste converts to Christianity) and Dalit Muslims (or Scheduled Caste converts to Islam) as Scheduled Caste for the purposes of reservation.....”.

28-09-2005: The Ministry issued yet another Notification E. No.1-11/2004 – MC expanding the terms of reference of the resolution dated 29-10-2004 “to give its recommendations on the issues raised in W. P. 180/04 and 94/05 filed in the Supreme Court and in certain High Courts relating to para 3 of the Constitution (Scheduled Castes) Order, 1950.....”

May 2006: The PM constituted the Saghir Ahemed Working group on May 24 & 25, 2006, to sumit its report of State Autonomy and other issues related to Jammu & Kashmir, inspite of the fact that till 2026, no change could take place legally with the Constitutional provisions.

17-11-2006: Sachar Committee Report was submitted to the PM.

30-11-2006: The Sachar Committee Report was tabled in the Parliament³⁴.

24-04-2007: The Saghir Ahemed Working group submitted the Report to the PM that includes ‘Strengthening Relations Across LoC’, ‘Confidence Building Measures Across Segments of Society in the State’, ‘Economic Development of Jammu and Kashmir’ and ‘Ensuring Good Governance’.

21-05-2007: Ranganath Misra commission Report was submitted.

³⁴ <http://minorityaffairs.gov.in/>

May 2009 – the 15th Lok Sabha Elections: Again UPA came to power, as NDA could not muster the required strength of alliance.

22-05-2009: UPA sworn in with Congress PM.

30-06-2009: Liberhan Commission Report submitted.

-11-2009: The Liberhan Commission Report was tabled in the Lok Sabha.

Thus, it is very evident that when the Government was dealing with very important and crucial issues, the facts were not at all publicized to the common people, but carried on with usual bureaucratic and official deliberations and considerations.

The Dissent Note controversy in the Ranganath Misra Commission Report:

As pointed out above, the entire exercise of the Report has been simply rushed through. Particularly, in the case of critical study of the Constitution (Scheduled Castes) Order, 1950, the Commission was evidently pressurised, as the Ministry of Social Justice and Empowerment issued the Notification E. No.1-11/2004 – MC expanding the terms of reference of the resolution dated 29-10-2004 “*to give its recommendations on the issues raised in W. P. 180/04 and 94/05 filed in the Supreme Court and in certain High Courts relating to para 3 of the Constitution (Scheduled Castes) Order, 1950.....* only on **28-09-2005**, when the tenure of the Member-Secretary was to expire by **20-09-2005**. Therefore, the Ministry has pressurised the Member-Secretary to opine on the crucial issue without giving enough time. Moreover, the rejoinder of Tahir Mahamood, a member issued has been totally acrimonious, hostile and political, which was recorded in the report³⁵ itself as “*Written by NCRLM Member Dr Tahir Mahamood and fully endorsed by the Chairman Justice RN Misra & Members Dr Wilson and Dr Mohinder Singh*”.

Criticism of the dissent Note: Incidentally, such aggressive and self-attacking criticism was immediately picked by the propagandists against her, though the full contents of the dissent note of Mrs Asha Das, Member-Secretary has not been revealed to the general public, or discussed by the media in an orchestrated manner³⁶. Thus, a criticism goes like this, “*Misra*

³⁵ Report of the National Commission for Religious and Linguistic Minorities (Ranganath Misra Commission Report), Vol.I, pp.169-170.

³⁶ Madhu Chandra, ***60 Years Of Constitutional Rights Denied To 20 Millions Indian Dalit Christians,*** 06 August, 2010, <http://www.countercurrents.org/chandra060810.htm>

In fact, such critical attacks started in 2007 itself, by the Christians and them picked up by V. T. Rajasekhara Shetty and others:

http://www.dalitvoice.org/Templates/june_a2007/reports.htm

Catholicunion@gmail.com adds: Justice Ranganath Misra and three religious members of the commission have recommended Scheduled Caste Rights for Muslims and Christians of Scheduled Caste origin (the issue of Dalit question is the third of three references of the Central Govt. to the commission) but the member-secretary, Mrs. Asha Das, IAS (retd.) has not agreed with the SC status for Dalit Christians and Muslims. The report has been given to Prime Minister Office. The Misra report will have to be submitted to the Supreme Court after the summer holidays in July 2007. The government will also have to give its ATR (Action

Commission Report came to its expire of term after submitting its report on May 25, 2007 with four members of five recommending to extend SC status to all Dalits who converted to Christianity while Asha Das - member secretary of the commission opposed. Asha Das opposition to the commission recommendation seems like to turn the ray of hope started dawning for Dalit Christians into darkness after discrimination of 59 years of their birth rights”.

The Report, Dissent and veto of the Commission : Mrs Asha Das has clearly recorded as to how the report was rushed through. She mentions about a Notification issued on 24-08-2005 by the Ministry which asked the Commission “as a part of its larger terms of reference for recommending welfare measures for the minorities including reservation in education and Government employment, examine the justification for specification of DalitChristians (or Scheduled Caste converts to Christianity) and Dalit Muslims (or Scheduled Caste converts to Islam) as Scheduled Caste for the purposes of reservation. If the opinion is in the affirmative, then Scheduled Caste converts to Christianity or Islam will have to be deleted from the Central list of Other Backward Classes and States wherever they are included”. The Commission was also asked “to examine whether the condition of ‘religion’ from Para 3 of the Constitution (Scheduled Caste) Order be deleted or Christianity and Islam be included in Para 3 of the Constitution (Scheduled Caste) Order, 1950”. The Commission was asked to give its specific recommendation on these aspects in its Report. Subsequently, vide Notification No.14/6/2005/MC dated 28.9.2005 a formal amendment to the terms of reference of the Commission was received which desired this Commission “to give their recommendations on the issues raised in Writ Petition No.180/04 and 94/05 filed in the Supreme Court and in certain High Courts of India relating to para 3 of the Constitution (Scheduled Castes) Order 1950, in the context of ceiling of 50 percent on reservations as also the modalities of inclusion in the list of Scheduled Castes.” Thus, inspite of the time constraint, she goes through the legality and gives her opinion that the reservation under the Order cannot be extended, as has well established by the law³⁷. She has thus summarized her findings as follows:

“In view of the preceding discussion with reference to the issues mentioned in para 3 of the note my views are as follows:

- (i) There is no justification for inclusion of SC converts to Christianity or SC converts to Islam as Scheduled Castes.
- (ii) The Constitution (SC) Order 1950 issued under Article 341 of the Constitution read with Article 15(4) is religion based. Therefore, the condition of ‘religion’ from para 3 of the order should not be deleted.
- (iii) The ceiling of 50 percent of reservation should continue as has been adjudicated by the Supreme Court.

Taken Report) at that time. Asha Das dissenting note gives much food to the Brahminical opposition to our demands and scuttles the Dalit Christian and Dalit Muslim.

³⁷ Ibid, pp.156-168.

(iv) As SC converts to Christianity/Islam do not qualify for inclusion as SCs, they should continue to form part of OBCs and avail of facilities and reservations given to the OBCs until a comprehensive list of SEB's is prepared.

However, the other members decided to ignore it by two pages veto note without going into the details³⁸.

Critical study of judgments and the modus operandi noted: A careful and critical study of High Court judgments reveal a clear pattern developed in recent years. Particularly in the cases of SCs converting to Christianity, there have been many decisions, but ultimately, the Christian converts reportedly coming back to Hindu religion, just legally enjoy the reservation benefits.

1. Converting to Christianity, but posing as Hindus – SC officially (In the State and Central government offices, rarely it is reported³⁹).
2. Suppressing or destroying the baptism certificate, Church records (of parents, marriage, divorce etc.,), School or college records (exemptions extended only to Christians), particularly hostel etc., where facilities could be available only to the Christians.
3. If problem comes or in anticipation, get a certificate from Arya Samaj, Hindu Sangam and so on, and then SC certificate from the Tashildar.
4. Donating to Hindu temples, organization and festivals getting receipts to the effect.
5. Attend Hindu festivals, performing Hindu rites, rituals and ceremonies and publicize.
6. Create impression that the particular caste / community members accepted them back into their fold.
7. Marry with the particular caste member.
8. Higher caste person marrying lower caste, SC, ST to claim such status.
9. Certain State governments aiding and abetting such activities by circumventing the legal provisions or issuing internal circulars, notifications etc⁴⁰.
10. Biased, prompting and circumventing judgments⁴¹.

³⁸ Ibid, pp.169-170.

³⁹ Actually, an Annual Report has to be submitted to the Central government about the SCs who converted to and professing Christianity in life, but enjoy SC reservation benefit by submitting SC certificate, but the report is not sent, on the pretext that one should not spoil the career of other and so on.

⁴⁰ M. Gopal Gounder (Deceased) vs The Special Tahsildar on 6 January, 2009. <http://www.indiankanoon.org/doc/787075/>

Conclusion: As pointed out, no doubt, the “Dalit issue” has been very sensitive, but when legality has to be analysed threadbare, the legal facts have to be brought out without mincing the words. Another important point has to be kept in mind is that even though secularization of economic, social and other processes are talked about, the secularization of legal processes is not discussed. Under such circumstances, the legality of the religious issues or where religion is dealt with, it has to be dealt with accordingly as per the Constitution and the established law.

The reservation made to SEBC, SC and ST groups has been based on the positive discrimination only, however, in reality, the hard facts have to be noted. To point out one simple fact, though Sikhs and Buddhists reportedly oppose caste system and untouchability, they have to be accommodated only under SC. Thus, if the more asserting reformative and egalitarian groups also want such reservation, they have to shed down their utopia and then, there only comes the real problem. Thus, they might politicize the issue with the manipulative political parties to circumvent the legal position. This aspect is brought out above, as evidently the *Soosai v. Union of India*, AIR 1986 SC 733 judgment has been against their demand.

Castes of Hindu religion identified on ‘untouchability’ related parameters were already scheduled under the 1936 Order. The validity of the order was considered by the Supreme Court in Writ Petition No. 9596/83 in the case of Soosai Vs The Union of India and Others (AIR 1986 SC 733). In para 7 of the judgment the Court had observed that “Now it cannot be disputed that the Caste system is a feature of the Hindu social structure. It is a social phenomenon peculiar to Hindu society. The Apex Court in para 8 of the judgment thus, observed that, “*it is therefore, not possible to say that President acted arbitrarily in the exercise of his judgment in enacting paragraph 3 of the Constitution (Scheduled Castes) Order, 1950.*” This is also sustained by the debate in Constituent Assembly which recognised “That the Scheduled Castes were a backward section of the society who were handicapped by the practice of untouchability” and that “This evil practice of untouchability was not recognised by any other religion” i.e. other than Hindu. It is apparent that the Constitution (SC) Order, 1950 relates to castes of Hindu religion. It only relates to the Castes discriminated within the Hindu religious system. The Constitution (SC) Order, 1950 is thus not discriminatory or violative of Articles 14, 15, 16 & 25 of the Constitution nor is it ultra vires of the Constitution as it provides for a special category i.e. the Scheduled Castes who have been given a special status under the Constitution. The Constitution (SC) Order, 1950 is thus neither unconstitutional nor ultra-vires of the Constitution nor it is violative of any fundamental right guaranteed by the Constitution.

⁴¹ The High Courts have started interpreted the following judgments differently in recent times against the pirit of the judgments - S. Swigaradoss vs Zonal Manager FCI – 1966 AIR 1182, G. M. Arumugam vs S. Rajagopal & others – 1976 AIR 939, S. Rajagopal vs G. M. Arumugam & others – 1969 AIR 101, Valsamma Paul vs Cochin University & others – AIR 1996 SC 1011, Principal, Guntur Medical College vs Y. Mohan Rao – 1976 AIR 1904.

ANNEXURE – I

THE CONSTITUTION (SCHEDULED CASTES) ORDER, 1950]¹(C.O.19)
In exercise of the powers conferred by clause (1) of article 341 of the Constitution of India, the President, after consultation with the Governors and Rajpramukhs of the States concerned, is pleased to make the following Order, namely:-

1. This Order may be called the Constitution (Scheduled Caste) Order, 1950.
2. Subject to the provisions of this Order, the castes, races or tribes or parts of, or groups within, castes or tribes specified in 2 [Parts to 3[XXII] 7{XXIII}8XXIV of the Schedule to this Order shall, in relation to the States to which those Parts respectively relate, be deemed to be Scheduled Castes so far as regards member thereof resident in the localities specified in relation to them in those Parts of that Schedule.
3. Notwithstanding anything contained in paragraph 2, no person who professes a religion different from the Hindu 5[, the Sikh or the Buddhist] religion shall be deemed to be a member of a Scheduled Caste.]
4. Any reference in this Order to a State or to a district or other territorial division thereof shall be construed as a reference to the State, district or other territorial division as constituted on the 1st day of May, 1976.]